

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Clifford A. Lowe, et al.	)	
	)	CASE NO. 1:19-CV-748-JG
Plaintiffs	)	
v.	)	JUDGE JAMES S. GWIN
	)	
ShieldMark, Inc., et al.	)	
	)	
Defendants	)	

**NOTICE OF APPEAL**  
**TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**  
**FROM THE ORDER (DOC. 191) OF THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF OHIO DISMISSING THE ACTION FOR LACK**  
**OF SUBJECT MATTER JURISDICTION WITH PREJUDICE**

NOTICE IS HEREBY GIVEN that **PLAINTIFFS** in the above-captioned case,  
**CLIFFORD A. LOWE** and **INSITE SOLUTIONS, LLC, n/k/a SPOTA LLC**, the same being  
all plaintiffs in the action, hereby appeal to the **UNITED STATES COURT OF APPEALS**  
**FOR THE FEDERAL CIRCUIT** from the final and appealable order (Doc. 191) of the District  
Court For The Northern District Of Ohio entered in this action on **AUGUST 23, 2022**  
**dismissing with prejudice the captioned action for lack of subject matter jurisdiction, i.e.,**

- 1) claims for patent infringement by, or in the alternative and based upon  
substantially the same set of facts;<sup>1</sup>
- 2) false advertising of the accused product; and

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<sup>1</sup> Count II of the Fourth Amended Complaint states at ¶ 62: “62. Pleading in the alternative, if ShieldMark’s Mighty Line floor marking tape product does not comport with the pictorial illustration of its advertising in a manner so as to avoid infringement of the ‘664 patent, then such advertising is false as to both the pictorial illustration and the representations that the beveled edges “increase durability for fork lift traffic;” “beveled edge tape can take a beating from industrial wheel traffic;” and “Mighty Line floor tape withstands..., forklifts....””

3) counterclaims for noninfringement, invalidity, and unenforceability) (Doc. 191, PageID #6300).

Also appealed are:

- 1) the same order (Doc. 191) of the same date (August 23, 2022) “in the alternative” granting “Defendants’ patent invalidity summary judgment motion” (Doc. 191, PageID #6300);
- 2) the order (Doc. 152, dated June 29, 2022) denying Plaintiffs’ motion for judicial recusal pursuant to 28 U.S.C. §144, 28 U.S.C. §455(a) and 28 U.S.C. §455 (b)(1) entered in this action on June 29, 2022; and
- 3) all orders that, for purposes of appeal, merge into the designated final and appealable order and therefore need not be designated in this Notice of Appeal under Federal Rule of Appellate Procedure 3(c)(4).

Dated: September 21, 2022

Respectfully submitted,

/s/ Ray L. Weber

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing

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has been filed electronically on September 21, 2022, with the United States District Court for the Northern District of Ohio. Notice of the filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Ray L. Weber  
Ray L. Weber